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dba Half Moon Anchorage

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BARTELL HOTELS, A California Limited
Partnership, dba HALF MOON ANCHORAGE,

Plaintiff,

v.

M/Y CLAIRE IRENE, a 1968 Owens Motor
Yacht of Approximately 40-Foot In Length And
11-Foot In Beam, Bearing California D.M.V.
Registration No. CF 8646 ED, AND ALL OF
HER ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*,

Defendant.

Case No. 07cv2097-L(BLM)

IN ADMIRALTY

DECLARATION OF PHILIP E.
WEISS IN SUPPORT OF VESSEL
ARREST AND REGARDING
SUBMISSIONS OF SECOND
APPLICATION FOR ORDER
AUTHORIZING ISSUANCE OF
WARRANT FOR VESSEL ARREST
AND SECOND APPLICATION
FOR ORDER APPOINTING
SUBSTITUTE CUSTODIAN

F.R.C.P. Supplemental Admiralty
Rules C and E.

I, Philip E. Weiss, declare under penalty of perjury under the laws of the United States
and the State of California that the following is true and correct.

1. I am an attorney for Plaintiff BARTELL HOTELS, dba HALF MOON
ANCHORAGE (hereinafter "PLAINTIFF") in this action. I am in good standing and
licensed to practice before all State and Federal courts located in California, including the
United States District Court for the Southern District of California. The focus of my practice
is now, and has been for approximately 17 years, maritime law, a subject I have taught as an
Adjunct Professor for approximately the past eight years. I also serve by designation of the

California Bar Association Board of Legal Specialization on the Consulting Group for
Specialization of Admiralty and Maritime Law. I believe I have caused the vessel arrest of
least three dozen vessels over the past five years, in both the Southern and Central Districts
of California. Based on the above experiences I believe Plaintiff holds a maritime lien that
encumbers the the Defendant Vessel, and that therefore she is subject to arrest by Order of
this Honorable Court as a matter of law. I have personal knowledge of the facts recited
herein and if called and sworn to testify, could and would competently so testify.

2. In order to address issues raised in this Honorable Court's November 15, 2007
Order (1) Dismissing Complaint With Leave to Amend and (2) Denying As Moot
Applications for Vessel Arrest Warrant and Appointment of Substitute Custodian, I prepared
and recently filed an Amended Verified Complaint for Vessel Arrest, which provides further
factual details that are intended to address issues raised in the Court's November 15, 2007
Order. Attached as Exhibit A to this Amended Complaint is a copy of an exemplar of the
wharfage contract at issue. As explained in detail in the Declaration of Michael J. Ardelit
Concerning Existence of Month-to-Month Wharfage Contract for Defendant Vessel (filed
simultaneously with the Amended Verified Complaint), Plaintiff was unable (as is
customary) to attach a copy of the wharfage contract at issue to its originally filed Verified
Complaint because, some years ago, Mr. Ardelit forwarded it to an insurance company, which
(despite his requests) has not returned it or a copy, so it can be attached to Plaintiff's
pleading. Apart from this Paragraph, this Declaration is substantively identical to the
Declaration I filed earlier in this action in support of Plaintiff's Application for Order
Authorizing Issuance of A Warrant for Arrest of Defendant Vessel.

3. This Declaration is submitted in support of PLAINTIFF's Second Application
for Order Authorizing Issuance of Warrant for Arrest, pursuant to Southern District Local
Rules for Admiralty and Maritime Claims, and in conformance with Rule C(3), Supplemental
Rules for Certain Admiralty and Maritime Claims, as amended April 29, 1985, which states:
"[T]he verified complaint and any supporting papers shall be
reviewed by the court and, if the conditions for an action in rem

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1 Homeland Security will not permit him to move.” He seemed to believe that, somehow,

2 PLAINTIFF is responsible for damage Mr. Hach claims his vessel sustained literally years

3 before PLAINTIFF even owned HALF MOON ANCHORAGE, purportedly as the result of

4 misconduct of the marina manager then employed by the former owner of the Marina. Mr.

5 Hach made it clear he was not inclined to sign a new wharfage contract (as is required of all

6 marina tenants) and that he will not move his vessel unless PLAINTIFF paid him tens of

7 thousand of dollars – apparently for damages he believes his vessel sustained long before

8 PLAINTIFF even owned the Marina.

9 7. The DEFENDANT VESSEL remains at PLAINTIFF’s Marina, without its

10 permission or legal authority of any kind.

11 8. There are no exigent circumstances which would justify execution of an Vessel

12 Arrest Warrant by the Clerk of this Honorable Court under Supplemental Admiralty Rule

13 C(3)(B).

14 9. In this action PLAINTIFF has applied to be appointed as the Substitute

15 Custodian during the pendency of the action. I am aware of no restriction, either statutorily

16 in case law or pursuant to the Supplemental Admiralty Rules that prohibits or discourages the

17 appointment of a party to serve as the Substitute Custodian, assuming of course that has the

18 experience, insurance and capability to do so. I have served as counsel for plaintiffs in at

19 least 20 vessel arrest cases (both in the Southern and Central Districts of California) in the

20 past six years during which the plaintiff was appointed as the substitute custodian. This

21 serves the purpose of minimizing *custodia legis* expenses, and hence the purpose of

22 preserving the value of the res.

23 10. If called to testify as to the foregoing matters, I could and would competently

24 so testify.

25 Executed on January 10, 2008 at San Diego, California.

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27

28 Philip E. Weiss

DECLARATION OF PHILIP E. WEISS IN SUPPORT OF VESSEL ARREST AND REGARDING SUBMISSION OF

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